

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TRUSTEES OF THE PAINTERS
UNION DEPOSIT FUND, a Voluntary
unincorporated trust,

Plaintiff,

vs.

CASE NO. 06-12360
HON. Lawrence P. Zatkoff
Magistrate Judge Donald A. Scheer

SCIWAY PAINTING, L.L.C., a
Michigan limited liability company,
and PAUL BRESETTE. individually,
jointly and severally,

Defendants.

FINKEL, WHITEFIELD, SELIK, FERRARA,
FELDMAN & SHERBIN, P.C.
Attorneys for Plaintiff
By: Richard M. Selik (P24276)
And: Stephen D. Kursman (P37902)
32300 Northwestern Highway, Suite 200
Farmington Hills, MI 48334-1567
(248) 855-6500

HOPKINS & FORHAN
Attorneys for Defendants
By: Stephen J. Hopkins (P25274)
40700 Woodward Avenue, Suite 250
Bloomfield Hills, MI 48304
(248) 540-3363

CONSENT JUDGMENT

At a session of Court held in the U.S. District Court, Detroit,
Michigan, on September 18, 2006

PRESENT: HON.: Lawrence P. Zatkoff
U.S. DISTRICT COURT JUDGE

The parties hereto being mutually desirous of disposing of the issues raised by this
suit without further litigation, and having entered into an agreement with one another as to
settlement of said issues, pursuant to said agreement, Plaintiff and Defendants are willing

to consent, and do consent, to the entry of the following judgment, the provisions of which shall bind Plaintiff and Defendants and their successors.

The Court being fully advised in the premises and having considered the desirability of disposing of the matters contained herein by means of this Consent Judgment;

DOES ORDER, ADJUDGE AND DECREE that the following judgment be, and the same is, hereby entered by the Court in this matter:

1. IT IS HEREBY ORDERED AND ADJUDGED that Plaintiff recover from Defendants, Sciway Painting, L.L.C. and Paul Bresette (hereinafter "Defendants"), jointly and severally, the total sum of \$23,026.74 for unpaid fringe benefit contributions and liquidated damages (consisting of \$19,188.95 in fringe benefit contributions plus \$3,837.79 in liquidated damages) due to Plaintiff for the period January 1, 2005 through June 30, 2006.

2. IT IS FURTHER ORDERED AND ADJUDGED that Defendants shall pay the amount due under paragraph 1 of this Consent Judgment to Plaintiff in accordance with the following schedule:

- (a) Upon execution of this Consent Judgment, but not later than September 15, 2006, Defendants shall pay to the Plaintiff, \$1,918.90 which shall be applied by Plaintiff to the amount due under Paragraph 1 of this Consent Judgment.
- (b) Commencing October 15, 2006, and continuing on the 15th day of each month through and including August 15, 2007, Defendants shall pay a monthly sum of \$1,918.90 to Plaintiff, which shall be applied by Plaintiff to the amount due under Paragraph 1 of this Consent Judgment.

3. IT IS FURTHER ORDERED AND ADJUDGED that all payments due under this Consent Judgment shall be made to Plaintiff by delivering the same on or before the

due date as follows: Finkel, Whitefield, Selik, Ferrara, Feldman & Sherbin, P.C., 32300 Northwestern Highway, Farmington Hills, MI 48334, Attention: Stephen D. Kursman or Richard M. Selik. or, alternatively, to the Painters Union Deposit Fund's office, attention Jeffrey Ruehle, 26877 Northwestern Highway, Suite 100, Southfield, MI 48304. In order for the payment to be timely received by Plaintiff, it must be delivered (not deposited in the mail) on or before the due date.

4. IT IS FURTHER ORDERED AND ADJUDGED that, during the time in which Defendants are making periodic payments under this Consent Judgment, Defendants shall timely pay all current fringe benefit contributions owed to Plaintiff pursuant to any collective bargaining agreement between Defendants and Painters District Council No. 22.

5. IT IS FURTHER ORDERED AND ADJUDGED that judgment interest shall not be added to the amounts due under paragraphs 1 and 2 provided Defendants adhere to the schedule of payments contained herein. If Defendants fail to pay the periodic payments required hereunder, judgment interest at the rate provided by statute on the date of entry of this Consent Judgment shall accrue on any unpaid balance.

6. IT IS FURTHER ORDERED AND ADJUDGED that so long as all payments required under **paragraphs 2 and 4** above are made on or before their respective due dates, time being of the essence, then Plaintiff shall withhold from proceedings supplementary to judgment for purposes of collecting the amount due hereunder. In the event that Defendants fail to make any required payments due under either **paragraphs 2 or 4**, Plaintiff may enforce this Consent Judgment through supplementary proceedings without seeking modification of the terms hereof by the Court and without further notice to

any Defendant, **even if the paragraph 2 payments are timely**. Nothing contained herein shall prevent Plaintiff from taking whatever action it deems appropriate, at any time and without prior notice to Defendants, to collect the current monthly fringe benefit contributions due on a monthly basis as set forth in Paragraph 4 above.

Notwithstanding the above, Plaintiff will **once, and once only**, if Defendants are late on a monthly payment called for by paragraph two of this Consent Judgment, send a written notice to Defendants' counsel by facsimile and first class mail, and allow Defendants seven (7) additional days from the date of the written notice, to make the payment referenced in the notice, prior to enforcing this Consent Judgment through post-judgment collection proceedings.

7. IT IS FURTHER ORDERED AND ADJUDGED that, upon full compliance with the provisions of this Consent Judgment, all attorney fees, interest, and court costs which may be charged to Defendants under 29 USC 1132(g)(2)(D) shall be deemed waived.

8. IT IS FURTHER ORDERED AND ADJUDGED that upon receipt of full payment and Defendants' full compliance with the provisions of this Consent Judgment, at Defendants' request, Plaintiff will file a satisfaction of this Consent Judgment with the

Court and, upon request by Defendants and preparation of the appropriate pleadings, Plaintiff shall further stipulate to set aside this Consent Judgment.

s/Lawrence P. Zatkoff
U.S. DISTRICT COURT JUDGE

Approved as to form and substance.
Notice of entry waived.

**FINKEL WHITEFIELD SELIK FERRARA
FELDMAN & SHERBIN, P.C.**

/s/ Stephen D. Kursman
Stephen D. Kursman (P37902)
Attorneys for Plaintiff
Dated: September 14, 2006

HOPKINS & FORHAN

/s/ Stephen J. Hopkins
Stephen J. Hopkins (P25274)
Attorneys for Defendants
Dated: September 11, 2006

SCIWAY PAINTING, LLC

By: /s/ Paul Bresette
Its Member
Dated: September 11, 2006

/s/ Paul Bresette
PAUL BRESETTE, PERSONALLY
Dated: September 11, 2006